

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

JAMES E. ADAIR	)	
	)	
COMPLAINANT	)	
	)	
VS.	)	CASE NO. 91-189
	)	
NORTH MARSHALL WATER DISTRICT	)	
	)	
DEFENDANT	)	

O R D E R

On July 2, 1991, James E. Adair ("Adair") filed a complaint against North Marshall Water District ("North Marshall") requesting that North Marshall assume operation of a water line now owned and operated by Volney Harriman ("Harriman"). By Order entered August 9, 1991, the Commission directed North Marshall to either satisfy or answer the allegations of the complaint. North Marshall filed its answer on August 26, 1991 denying that Harriman was operating a water line and stating affirmatively that it would extend water service to Adair upon proper application and Adair's agreement to pay a portion of the cost of constructing a water line to his property and the connection fee. On September 18, 1991, the Commission, by Order, made Harriman a party to the action and directed him to respond to the complaint. Harriman filed his response on October 21, 1991 admitting that he was operating a water line, but stating affirmatively that he was doing so with the full knowledge of North Marshall. Harriman

further admitted that he refused to provide service to Adair. On January 8, 1992, this case was set for hearing.

The hearing was held before the Commission on February 6, 1992 at which time North Marshall appeared and was represented by counsel. Neither Adair nor Harriman appeared or were represented at the hearing.

#### STATEMENT OF FACTS

North Marshall is a water district organized and operating in Marshall County. North Marshall owns, controls, and operates facilities used in diverting, developing, pumping, impounding, distributing, and furnishing water to or for members of the public in Marshall County for compensation. It operates under rules, regulations, and tariffs on file with this Commission.

Harriman also owns, controls, or operates facilities used in distributing and furnishing water. Harriman's facilities consist of a two-inch water line extending along a county road from a North Marshall six-inch water main. In addition to Harriman, the water line serves three customers. Harriman purchases the water he sells from North Marshall and he charges his customers the same water rates that North Marshall charges its customers. Water is delivered to Harriman from North Marshall, through a one and one-half inch meter that is installed at the connection point between his water line and North Marshall's six-inch main.

Adair resides on property he owns adjacent to the county road along which the Harriman line runs. In addition to his current residence, Adair is constructing a home on the property for his son and has requested service from Harriman to both residences.

Harriman has refused that request. Adair has also requested service from North Marshall to serve both his current residence and the residence that he has under construction. Before North Marshall can provide service to Adair, a new water line must be run to the property. North Marshall is willing to provide the service if Adair will agree to pay for all but 100 feet of the cost of constructing the new line. Adair has not been willing to contribute to the construction costs and consequently the new water line has not been constructed.

The Harriman line was constructed in 1975 by Harriman and Earl Matthews. Before constructing the line, Harriman and Earl Matthews requested water service from North Marshall to their respective properties. It is North Marshall's policy, however, not to run a line across private property without an easement. Because the county road upon which the line is now located was then a private road owned by Adair, North Marshall refused to extend the water line to Harriman's and Earl Matthews' properties. North Marshall did, however, agree to allow Harriman and Earl Matthews to tap into the six-inch main with the two-inch line, identified earlier as the Harriman line, that they constructed.

In 1978 and 1979, Harriman permitted two more properties to tap on to the Harriman line. Meters were installed to measure the volume of water delivered to those properties. No other customers have been allowed to connect to the line.

The Harriman line is approximately 1,700 to 2,000 feet long. When originally constructed, it was installed at a depth of 24 inches below the surface of the road along which it runs. Later,

after the line's installation when the road became a county road, it was widened from one lane to two and its surface regraded and capped. In the course of improving the road, however, portions of the water line were uncovered and are now above ground.

#### CONCLUSIONS OF LAW

Both North Marshall and Harriman are utilities as defined in KRS 278.010(3)(d). As utilities, they are required by KRS 278.160 to file with this Commission their tariffs and conditions of service and to provide service only in accordance with those schedules. Harriman has never complied with this section, Harriman is not authorized to resell the water he purchases from North Marshall, and his operations as a utility are in violation of the law.

North Marshall has filed its tariffs and conditions of service with the Commission. Section VI of the tariffs requires each domestic or residential customer of North Marshall to have its own water meter and prohibits the resale of water by a customer who purchases water from North Marshall through a residential meter. The resale of water purchased from North Marshall by Harriman violates this provision of North Marshall's tariff filed with the Commission and the sale of water to Harriman is also in violation of the law.

The Harriman line does not conform to Commission standards. 807 KAR 5:066, Section 9, requires that all water mains be buried not less than 24 inches below ground level. The purpose of this requirement is to prevent the water in the line from freezing during periods of cold weather. In addition, 807 KAR 5:066,

Section 11, does not permit the use of two-inch pipe in a non-circulating system if the length of the pipe exceeds 250 feet. The Harriman line, being between 1,700 and 2,000 feet, is also in violation of that regulation.

Because North Marshall's sale of water to Harriman for resale violates the law, North Marshall should be directed to terminate service to Harriman until Harriman, in turn, terminates service to his customers. However, to avoid undue hardship to the customers on the Harriman line that would result from an abrupt termination of service, North Marshall should be allowed a reasonable period to extend service directly to those customers before terminating service to Harriman. In addition to extending service to Harriman line customers, North Marshall should also extend service to Adair. To minimize the cost of extending service, North Marshall should be allowed to acquire the Harriman line on mutually agreeable terms and be granted a deviation in accordance with 807 KAR 5:066, Section 11(2)(a), from Commission regulations which will allow North Marshall to use the Harriman line to serve its new customers. In granting the deviation, however, North Marshall should be required to make alterations to the line so that its entire length will not be less than 24 inches below the ground.

If North Marshall is unable to acquire the Harriman line, it should extend service to Adair and the existing customers on the Harriman line by constructing a new line. The cost of construction of the new line should be allocated between North Marshall and the new customers in accordance with 807 KAR 5:066, Section 12. That regulation requires water utilities to bear the

entire cost of extending service to prospective customers when the extension to the existing main is 50 feet or less for each customer. If the extension requires more than 50 feet per customer, the customers are required to bear the cost of construction for the excess footage. If during the 10-year period following the construction additional customers connect to the extension, customers who paid for the original construction are entitled to reimbursement of an amount equal to the cost of 50 feet for each new customer added to the line. Since the new line will serve at the outset five residential customers, North Marshall should pay an amount equal to the cost of 250 feet of its construction and the balance should be divided equally among the five new customers.

North Marshall should also be allowed to charge the new customers its customary fees for connecting to its system. Since Harriman has previously paid these fees, he should not be required to pay them again even if his meter has to be replaced or relocated.

IT IS THEREFORE ORDERED that:

1. Subject to the provisions of this Order, North Marshall shall terminate service to Harriman until such time as Harriman terminates service to his customers.

2. Prior to terminating service to Harriman, North Marshall shall offer to extend water service to Harriman's customers and to Adair.

3. If North Marshall, in extending service to Harriman's customers, or to Adair, or any of them, is able to acquire the

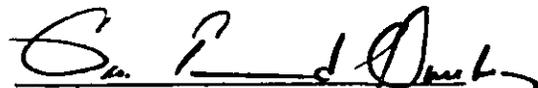
Harriman line, North Marshall shall be permitted to operate the Harriman line provided that it brings it into compliance with the requirements of 807 KAR 5:066, Section 9(1), which requires all distribution mains to be buried not less than 24 inches below ground level. North Marshall shall be permitted a deviation from the minimum size requirements in accordance with 807 KAR 5:066, Section 6(1).

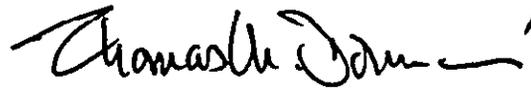
4. If North Marshall is unable to acquire the Harriman line under terms mutually acceptable to North Marshall and Harriman, North Marshall shall offer to extend service to the customers of the Harriman line and to Adair by constructing a new line and allocating the cost of construction between the customers and North Marshall in accordance with 807 KAR 5:066, Section 12(a).

5. North Marshall shall be permitted to charge its normal connection fees to each customer who connects to the Harriman line or a line constructed by North Marshall; except that Harriman shall not be required to pay a connection fee even though North Marshall may be required to replace or relocate his meter.

Done at Frankfort, Kentucky, this 6th day of May, 1992.

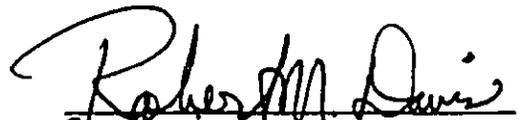
PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

ATTEST:

  
Executive Director

  
Commissioner